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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GOLDEN STATE ENVIRONMENTAL
JUSTICE ALLIANCE,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, et al.

Defendants and Respondents;

DOUGLAS EMMETT MANAGEMENT,
LLC,

Real Party in Interest and
Respondent.

B295988

(Los Angeles County
Super. Ct. No. BS168429)

APPEAL from an order of the Superior Court of
Los Angeles County, John A. Torribio, Judge. Affirmed.

Blum Collins, Craig M. Collins and Hannah Bentley for
Plaintiff and Appellant.

Michael N. Feuer, Terry Kaufmann Macias, John W. Fox, and Leonard P. Aslanian; Burke, Williams & Sorensen, Anna C. Shimko, Gail E. Kavanagh, and Stephen E. Velyvis for Defendants and Respondents.

Armbruster Goldsmith & Delvac and Damon P. Mamalakis for Real Party in Interest and Respondent.

In 2015, real party in interest Douglas Emmett Management LLC (Douglas Emmett) filed an application with the City of Los Angeles (City) to build a 34-story residential building on Wilshire Boulevard in West Los Angeles (the Project).¹ The City prepared an environmental impact report (EIR) in connection with the Project, which it certified in January 2017.

Appellant Golden State Environmental Justice Alliance (Golden State) filed a petition for writ of mandate challenging the City's certification of the EIR. The superior court denied the petition in significant part, but agreed with Golden State that the City had erroneously calculated the Project's energy use. The court therefore decertified a limited portion of the EIR and ordered the City to prepare a revised energy impact analysis.

Golden State filed a motion pursuant to Code of Civil Procedure section 1021.5 (section 1021.5) seeking prevailing party attorney fees of \$545,850. While that motion was pending, the City certified a revised energy impact analysis that corrected the erroneous calculation. Thereafter, the trial court denied the

¹ The City and Douglas Emmett are referred to collectively as respondents.

request for fees, concluding that Golden State was not the prevailing party and had not conferred a significant benefit on the public. Golden State appealed the attorney fee order.

As we discuss, the trial court did not abuse its discretion by concluding that the statutory prerequisites to an attorney fee award under section 1021.5 were absent. We therefore affirm the order denying attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Landmark Apartment Project

In 2015, Douglas Emmett proposed the construction of a 34-story residential building, to contain up to 376 dwelling units, on a 2.8-acre site on Wilshire Boulevard in West Los Angeles. At the time the Project was proposed, the site was occupied by a 42,900-square foot, single-story supermarket building, which Douglas Emmett proposed to demolish, and a 17-story office building, which would remain.

B. City's Environmental Review Process

The City released a draft EIR for public comment in April 2016. Golden State submitted comments to the draft EIR in June 2016 that addressed the City's analysis of a variety of issues, including shading, air quality, soils, greenhouse gas emissions, land use, noise, public services, and traffic. The City issued a final EIR in September 2016, and in October 2016, the Deputy Advisory Agency, an arm of the City's Planning Department, certified the EIR.

Golden State appealed the approval of the Project and certification of the EIR to the City Planning Commission. In November 2016, the City Planning Commission certified the EIR, denied Golden State's appeal, and granted other approvals for the Project. In January 2017, the City Council's Planning and Land

Use Management (PLUM) Committee recommended that the City Council certify the EIR and uphold the Planning Commission's approvals. On February 14, 2017, the City Council certified the EIR and approved the project.

C. Mandate Proceeding

In March 2017, Golden State filed a petition for writ of mandate seeking to set aside the City's approval of the Project. Thereafter, it filed a motion for writ of mandate, urging the superior court to order the City to set aside its approval of the Project's EIR for the following reasons:

(1) The EIR inadequately assessed greenhouse gas emissions impacts because it failed to demonstrate that the Project would comply with the state mandate of reducing emissions to 40 percent below 1990 levels by 2040.

(2) The EIR failed to conduct a proper health risk assessment with regard to diesel particulate impacts.

(3) The EIR erroneously concluded that the Project's shading impact was insignificant.

(4) The EIR relied on an erroneous calculation to conclude that the Project would result in a net reduction in energy use. Specifically, in calculating expected energy savings, the EIR subtracted the combined energy use of the supermarket and office building on the site, even though the Project would eliminate only the supermarket.

In opposition, the City and Douglas Emmett (collectively, respondents) asserted that the EIR contained a CEQA-compliant greenhouse gas emissions impact analysis; a health risk assessment was not required, but nonetheless had been conducted; and the Project's shading impacts were not significant. With regard to the EIR's energy analysis,

respondents conceded that its energy-use calculation contained an error, but they urged that the error did not affect the City’s conclusion “that the Project would not result in the unnecessary, inefficient or wasteful use of energy.”

On June 28, 2018, the superior court issued an order granting in part and denying in part the mandate petition.² The court found that the EIR contained a CEQA-compliant analysis of greenhouse gas emissions impacts, health risks, and shading impacts, but contained an erroneous calculation of the Project’s energy impacts. The court therefore decertified the portion of the EIR associated with energy impacts and certified the remainder of the EIR.

On October 2, 2018, the court entered a peremptory writ of mandate directing the City to prepare, circulate for public review, and recertify a revised energy impact analysis. The Project was permitted to continue at Douglas Emmett’s own risk. The trial court retained jurisdiction over the action to ensure compliance with the writ.

D. Recirculated Energy Analysis

In October 2018, the City issued a Recirculated Energy Analysis (REA). The REA provided a corrected calculation of the Project’s projected energy impacts “by deducting the energy demand associated with existing baseline uses within the Project Site (i.e., the office building, supermarket, and enclosed parking) from the energy demand associated with the Project (i.e., the new

² Golden State appealed the trial court’s order, asserting error with respect to the partial denial of the mandate petition. In an opinion filed January 28, 2020, we affirmed the trial court’s order.

residential uses and amenities, the office building to remain, and the existing enclosed parking that will be slightly reconfigured yet remain).” Notwithstanding this correction, the City’s conclusions regarding energy impacts remained the same—i.e., that the Project’s energy impacts would be less than significant because the Project would not cause wasteful, inefficient, or unnecessary consumption of energy and would not result in an increased energy demand that would exceed available supply.

After receiving and responding to public comments, the City published a Final Recirculated Energy Analysis on January 3, 2019. On February 12, 2019, the PLUM Committee recommended that the City Council certify the Final Recirculated Energy Analysis, and on February 22, 2019, the City Council adopted the PLUM Committee’s recommendations. The trial court discharged the peremptory writ of mandate on March 22, 2019.³

E. Golden State’s Motion for Attorney Fees

In August 2018, Golden State made a motion pursuant to Code of Civil Procedure section 1021.5 for attorney fees and costs of \$545,850.⁴ Golden State urged that it was the successful party because it “ha[d] achieved relief from the benchmark conditions challenged by the lawsuit.” Further, it said, it had enforced an important right affecting the public interest—namely, the right to accurate information concerning energy impacts—and had

³ Golden State did not appeal from the order discharging the writ of mandate.

⁴ Golden State subsequently increased its fee request to \$613,525, to account for attorney time spent responding to discovery relevant to the fee motion.

conferred a significant benefit on a large class of persons. Finally, Golden State urged that the fee request was reasonable because it was based on hours actually worked, a rate of \$500 per hour, and a reasonable multiplier (two times hours spent on merits-based work, and 1.5 times hours spent on the fee motion).

On January 11, 2019, the trial court denied the motion for attorney fees. In relevant part, it explained as follows:

“Upon motion, a court may award attorneys’ fees to a *successful party* against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) *a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public* or a large class of persons, (b) *the necessity and financial burden of private enforcement*, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. ([Code Civ. Proc., §] 1021.5.)

“The term “successful party,” as ordinarily understood, means the party to litigation that achieves its objectives.’ [Citation.] As stated in its Petition, Petitioner’s litigation objectives were to set aside *all* Project approvals, including decertifying the entire EIR, and to secure an injunction preventing construction of the Project. Petitioner did not achieve any of these objectives.

“Further, the court finds Petitioner failed to demonstrate that the action conferred a ‘significant benefit’ on the general public since all project approvals remain valid. The court issued a very limited writ, decertifying only the energy impact analysis of the EIR due to a calculation error. The calculation error was

corrected, and the Recirculated Energy Impact analysis reflects the same conclusion as the original—the Project’s energy impacts are less than significant.

“The court rejected all of Petitioner’s remaining CEQA claims, including alleged defective [greenhouse gas] impact analysis, health risk assessments, shading impacts, and improper delegation.

“In *Concerned Citizens [of La Habra v. City of La Habra]* (2005) 131 Cal.App.4th 329, 333], the defective [mitigated negative declaration] relating to ‘cut-through traffic’ was considered a ‘minute blemish,’ ‘the correction of which was not likely to change the project,’ and attorney’s fees were denied. [Citation.] The court held the mere vindication of a statutory violation is not sufficient to be considered a substantial benefit by itself. ‘The Petitioners were only successful in one small regard and were unsuccessful on all significant issues. There were no significant benefits derived by a large number or class of people and Petitioners did not obtain the outcome they desired.’ Similarly here, the energy impact error was a minor calculation error, which was corrected, recirculated, and reflects the same conclusion as the original—the Project’s energy impacts are less than significant. Accordingly, the court finds that Petitioner failed to demonstrate that the writ would confer a significant benefit to the general public.

“Finally, Petitioner failed to demonstrate that the necessity and financial burden of private enforcement are such as to make the award appropriate. Petitioner has not established that the costs of litigation transcended the personal interests of its members. There was virtually no substantive public comment on the Recirculated Energy Analysis because the energy impact

determination remained exactly the same—‘less than significant.’ [Citation.]

“Petitioner’s executive director testified that its only source of income is settlements obtained either due to the threat of, or as a result of filing, CEQA lawsuits. [Citation.] Thus, Petitioner had a clear financial stake in this action, i.e., to settle this lawsuit for money. [Citation.]

“Accordingly, Petitioner failed to meet the requirements for an award of attorney’s fees pursuant to section 1021.5.”

Golden State timely appealed from the order denying attorney fees.

DISCUSSION

Golden State contends the trial court erred by denying the motion for attorney fees because its petition for writ of mandate vindicated an important public right—namely, accurate CEQA disclosures—and thus conferred a significant benefit on a large class of persons.

Respondents urge that the trial court acted well within its discretion by denying the attorney fee motion because Golden State did not achieve any of its litigation objectives, did not spur the enforcement of an important right affecting the public interest, and did not confer a significant benefit on a large number of people.

I.

Legal Standards

A. Section 1021.5

“‘As a general rule, parties in litigation pay their own attorney’s fees. [Citation.] Section 1021.5 is an exception to that rule. [Citation.] Derived from the judicially crafted “private attorney general doctrine” [citation], section 1021.5 is aimed at

encouraging litigants to pursue meritorious public interest litigation vindicating important rights and benefitting a broad swath of citizens, and it achieves this aim by compensating successful litigants with an award of attorney’s fees [citations].’ [Citation.] The intent of section 1021.5 fees is not ‘to punish those who violate the law but rather to ensure that those who have acted to protect public interest will not be forced to shoulder the cost of litigation.’ [Citation.]” (*Friends of Spring Street v. Nevada City* (2019) 33 Cal.App.5th 1092, 1107 (*Spring Street*).

Section 1021.5 permits an award of attorney fees “to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.” (§ 1021.5.) Because section 1021.5 states the criteria in the conjunctive, *each* criterion must be satisfied to justify a fee award. (*McGuigan v. City of San Diego* (2010) 183 Cal.App.4th 610, 623 (*McGuigan*); *RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 775.)

B. Standard of Review

Whether a party has established its eligibility for fees under section 1021.5 implicates “‘a mixed standard of review: To the extent we construe and define the statutory requirements for an award of attorney’s fees, our review is de novo; to the extent we assess whether those requirements were properly applied, our review is for an abuse of discretion.’ [Citation.] ‘The pertinent

question is whether the grounds given by the court for its denial of an award are consistent with the substantive law of section 1021.5 and, if so, whether their application to the facts of th[e] case is within the range of discretion conferred upon the trial courts under section 1021.5, read in light of the purposes and policy of the statute.’” (*Spring Street, supra*, 33 Cal.App.5th at p. 1107.)

Because the award of fees under section 1021.5 is an equitable function, the trial court must “realistically and pragmatically evaluate the impact of the litigation to determine if the statutory requirements have been met.” (*Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329, 334 (*Concerned Citizens*), citing *Otto v. Los Angeles Unified School Dist.* (2003) 106 Cal.App.4th 328, 331–332.) This determination is best made by the trial court, and the trial court’s judgment on this issue will not be disturbed on appeal “‘unless the appellate court is convinced that it is clearly wrong and constitutes an abuse of discretion.’” (*Concerned Citizens, supra*, 131 Cal.App.4th at p. 334; see also *McGuigan, supra*, 183 Cal.App.4th at p. 623.)

Golden State urges that we should review the order denying its motion for attorney fees de novo because the underlying factual questions are undisputed. Not so. As we have said, de novo review of an attorney fee award is appropriate “‘where the determination of whether the criteria for an award of attorney fees and costs in [the present] context have been satisfied amounts to statutory construction and a question of law.’” (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175 [applying de novo standard of review where sole issue on appeal was whether “opposing party” attorney fees could be

awarded against an amicus curiae under § 1021.5].) In the present case, however, whether Golden State was entitled to an award of attorney fees is not an issue of statutory construction, but rather is a “mixed question of law and fact.” (*Ibid.*) Accordingly, “[e]ven assuming the underlying facts are undisputed, it remains the trial court’s duty to consider those facts and the circumstances of the case and exercise its discretion in determining whether the requirements were satisfied for an award of attorney fees under section 1021.5, and we can reverse the court’s determination only if there is no reasonable basis for it. (*Wal-Mart [Real Estate Business Trust v. City Council of San Marcos* (2005) 132 Cal.App.4th 614,] 620.)” (*Carian v. Department of Fish & Wildlife* (2015) 235 Cal.App.4th 806, 816.) In the present case, therefore, although many of the underlying facts are undisputed, we will defer to the trial court’s *characterization* of those facts—e.g., its conclusions that the action has not resulted in the enforcement of an “important” right, and that the public has not received a “significant” benefit—if it is reasonable in light of the whole record.

II.

This Action Did Not Result in a “Significant Benefit” to the Public

A. Legal Standards

We begin with the first prong of section 1021.5—whether this action conferred a “significant benefit” on a large number of people.

“ ‘Entitlement to fees under [section] 1021.5 is based on the impact of the case as a whole.’ ” (*Punsly v. Ho* (2003) 105 Cal.App.4th 102, 114, quoting what is now Pearl, Cal. Attorney Fee Awards (Cont. Ed. Bar 2d ed. 2008) § 4.11, p. 100.)

As for what constitutes a ‘significant benefit,’ it ‘may be conceptual or doctrinal, and need not be actual and concrete, so long as the public is primarily benefited.’ (*Planned Parenthood v. Aakhus* (1993) 14 Cal.App.4th 162, 171.)” (*Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region* (2010) 183 Cal.App.4th 330, 363 (*Karuk*).) “ ‘ “The trial court in its discretion ‘must realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award’ under section 1021.5. [Citation.]” ’ ” (*Id.* at p. 362.)

“Because ‘the public always has a significant interest in seeing that legal strictures are properly enforced . . . , in a real sense, the public always derives a “benefit” when illegal private or public conduct is rectified.’ [(*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 939 (*Woodland Hills*).)] However, ‘the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation.’ (*Ibid.*)” (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 737 (*Keep Our Mountains Quiet*).) Thus, in adjudicating a motion for attorney fees under section 1021.5, a trial court must determine “the significance of the benefit, as well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.” (*Woodland Hills, supra*, 23 Cal.3d at pp. 939–940; see also *Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at p. 737 [quoting *Woodland Hills*]; *Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 1366 [trial court is required to determine “the significance of the benefit as well as the size of the group favorably impacted by

making ‘a realistic assessment, in light of all the circumstances, of the gains which have resulted in a particular case’ ”].)

The Court of Appeal applied these principles in *Concerned Citizens* to conclude that although a petitioner had obtained a limited reversal in the trial court, the court had discretion to deny the petitioner’s request for attorney fees. In that case, petitioner Concerned Citizens of La Habra (CCLH) filed a petition for writ of mandate challenging the City of La Habra’s (La Habra) approval of the construction of a Costco retail warehouse. CCLH urged there was evidence that the project would result in significant traffic, noise, and land use impacts, and thus La Habra should have prepared an EIR, rather than a mitigated negative declaration (MND), before approving the warehouse.⁵ (*Concerned Citizens, supra*, 131 Cal.App.4th at p. 332.) The trial court rejected most of CCLH’s contentions, but found there was some evidence that the proposed warehouse would cause unmitigated traffic impacts. The court therefore declined to order an EIR, but directed the City of La Habra to reconsider its approval of the project. (*Id.* at p. 333.) Thereafter, the court denied CCLH’s motion for attorney fees because it concluded the litigation had not conferred significant benefits on a large class of people. (*Ibid.*)

⁵ An agency prepares a “mitigated negative declaration,” rather than an EIR, when an initial study shows there is no substantial evidence that the project may have significant environmental effects, or the initial study identifies potentially significant effects, but revisions made before the initial study is released for public review would avoid or mitigate the effects to a point where no significant effects would occur. (Cal. Code Regs., tit. 14, § 15070.)

The Court of Appeal affirmed the order denying CCLH’s motion for fees. It explained: “[T]he trial court assessed the circumstances of the case and determined the gains obtained by CCLH did not confer a significant benefit on a large class of people. Having heard the evidence in support of CCLH’s challenges to the MND, it rejected all of the claimed defects except one. The trial court agreed the MND did not adequately support the conclusion that the [traffic] effects . . . were mitigated, but it felt the inadequacy was a ‘minute blemish’ that could be repaired. . . . CCLH did not establish a precedent that applied statewide; rather, it successfully asserted a defect in CEQA’s *process*, the correction of which was not likely to change the project.

“We recognize that CEQA involves important rights affecting the people of this state and that section 1021.5 was enacted to encourage the enforcement of such legislation by public interest litigation. [Citation.] But enforcement efforts alone do not justify an attorney fee award; the benefit gained must be significant and widespread. The trial court determined it was not. On this record, we cannot conclude that the trial court’s determination was a prejudicial abuse of discretion.” (*Concerned Citizens, supra*, 131 Cal.App.4th at pp. 335–336.)⁶

⁶ Golden State contends *Concerned Citizens* is distinguishable from the present case because it upheld a MND, while the present case concerns an EIR. Golden State has not cited any authority, and we are aware of none, for the proposition that CEQA challenges to MNDs are subject to different attorney fee analyses than are CEQA challenges to EIRs. Moreover, since attorney fee awards in both contexts are governed by section

The Court of Appeal reached a similar conclusion in *Karuk*. There, a number of private parties (petitioners) asked a regional water control board (Board) to enforce California law governing waste discharge to hydroelectric dam reservoirs. The Board concluded that California waste discharge standards were preempted by federal law, and it thus denied the relief petitioners sought. The petitioners filed a petition for writ of mandate, and the trial court sent the matter back to the Board to reconsider its initial refusal in light of two decisions by the United States Supreme Court. Subsequently, the Board again concluded federal law preempted the California standards, and the trial court agreed and discharged the writ. Nonetheless, the court awarded petitioners \$138,250 in attorney fees pursuant to section 1021.5, concluding that the litigation had resulted in the “ ‘important public benefit’ of the Board making ‘a thoughtful and well-reasoned determination’ concerning its lack of authority to enforce state law.” (*Karuk, supra*, 183 Cal.App.4th at p. 335.)

The Court of Appeal reversed the award of attorney fees, concluding fees were not warranted as a matter of law. The court explained that the appropriate benchmarks in evaluating a fee request “ ‘are (a) the situation immediately prior to the commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes between the two.’ ” (*Karuk, supra*, 183 Cal.App.4th at p. 364.) In the present case, the petitioners could point to no meaningful changes: “Before plaintiffs commenced this litigation, the Board declined to enforce [state law] against the Klamath River dams

1021.5, we can conceive of no reason that the analysis of *Concerned Citizens* should not apply here.

on the ground that, as to the matter of water quality, federal authority was supreme and exclusive. When this litigation ended, the Board was still declining to enforce [state law]. Again, to quote the Board, ‘the final result of [petitioners’] efforts before the trial court were to change nothing, and those efforts had no impact on the Board’s position as it existed when the action was first filed.’ The only difference was that the Board now had the concurrence of the trial court. If ‘ “ ‘the critical fact is the impact of the action’ ” ’ (*Graham [v. DaimlerChrysler Corp.]* (2004) 34 Cal.4th 553, 566), that impact can only be described as nil. ‘[I]n order to justify a fee award, there must be a causal connection between the lawsuit and the relief obtained’ (*Westside Community [for Independent Living, Inc. v. Obledo]* (1983) 33 Cal.3d 348, 353) or ‘a change in the defendant’s conduct.’ (*Urbaniak v. Newton* (1993) 19 Cal.App.4th 1837, 1842.) But here there was neither genuine relief obtained by plaintiffs nor change by the Board. Any realistic assessment of this litigation from a practical perspective based on the impact of the case as a whole (see *Graham, supra*, at p. 566; *Punsly v. Ho, supra*, 105 Cal.App.4th 102, 111) can come to no other conclusion.” (*Id.* at pp. 365–366.)

In reaching this result, the court rejected as “completely unpersuasive” the petitioners’ contention that they were entitled to fees because they had vindicated “ ‘the public’s right to ensure that governmental agencies follow the letter of the law,’ as well as the public’s ‘important right to challenge arbitrary decisions by the Regional Board, including those rendered arbitrary [by] its failure to explain its reasoning.’ ” (*Karuk, supra*, 183 Cal.App.4th at p. 365.) The court concluded: “From a realistic appreciation of the entirety of this litigation, plaintiffs did not prevail on a

significant issue and thus do not qualify as successful parties. They also did not enforce an important public right. Finally, what plaintiffs did here did not confer a significant benefit. For each and all of these reasons, the fee award to plaintiffs was not warranted.” (*Id.* at p. 369.)

B. Application to the Present Case

Taken together, *Concerned Citizens* and *Karuk* stand for the principle that a mere change in *process*, without any substantive alterations to a project itself, is not a significant benefit requiring the award of attorney fees. The trial court relied on this principle in denying Golden State’s request for attorney fees, concluding that although this suit resulted in the correction of a calculation error in the EIR, it did not in any respect change the Project’s environmental impact.

The trial court did not abuse its discretion in so concluding. The purpose of an EIR “is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” (Pub. Resources Code, § 21002.1, subd. (a); see also Cal. Code Regs., tit. 14, § 15121, subd. (a).) Among the issues to be addressed in an EIR are a project’s “energy impacts”—that is, whether a project “may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources,” and, if so, how those impacts will be mitigated. (Cal. Code Regs., tit. 14, § 15126.2, subd. (b).) Energy impacts “may include” a project’s total and peak use energy requirements, effects on local and regional energy supplies and on requirements for additional capacity, and compliance with existing energy standards. (Cal. Code Regs., tit. 14, § Appendix F.) Mitigation considerations may

include “[i]n addition to building code compliance, . . . the project’s size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project.” (*Ibid.*; see also Cal. Code Regs., tit. 14, Appendix F [“Energy Conservation”].)

In the present case, the initial EIR described the Project’s potential energy impacts, noting that energy would be consumed for multiple purposes “including, but not limited to heating/ventilating/air conditioning (HVAC), refrigeration, lighting, electronics, office equipment, and commercial machinery,” as well as “operations related to water usage, solid waste disposal, and vehicle trips.” The EIR projected that due to a variety of energy saving measures and the removal of the on-site supermarket, the Project would result in “a net reduction in [operational] energy use.” It thus reached the following conclusions with regard to the Project’s energy impacts:

- The Project “would be designed and constructed in accordance with State and local green building standards that would serve to reduce the energy demand of the Project.”
- The Project’s energy demands “would be within the existing and planned electricity and natural gas capacities of [Los Angeles Department of Water and Power (LADWP) and Southern California Gas Company (SoCalGas)], respectively, and in fact would result in a net reduction and beneficial impact with regard to energy usage compared to existing conditions.”
- The Project “would not cause wasteful, inefficient, and unnecessary consumption of energy and would be consistent with the intent of Appendix F of the CEQA Guidelines.”
- Impacts “would be less than significant.”

The REA corrected the EIR's erroneous calculation of the Project's operational energy demand by including energy uses associated with the office building. In light of the correction, the REA stated that the Project would result in a net decrease in electricity use, but a net increase in natural gas and transportation fuels. The City's ultimate conclusions regarding the Project's energy impacts remained essentially unchanged, however:

- The Project “would comply with applicable regulatory requirements for the design of new buildings, including the provisions set forth in the CALGreen Code and California’s Building Energy Efficiency Standards.”
- The Project “would not result in an increase in demand for electricity, natural gas, or transportation energy that exceeds available supply or distribution infrastructure capabilities that could result in the demand for the construction of new energy facilities or expansion of existing facilities.”
- The Project “would not cause wasteful, inefficient, and unnecessary use of energy.”
- Project impacts related to energy infrastructure and facilities “would be less than significant.”

Significantly, the REA did “not revise the EIR in any respect other than . . . the energy analysis.” And, because the REA concluded that, despite the revised calculation of energy use, the Project's impacts would be less than significant, it did not suggest or require that any changes be made to the Project design.

On this record, the trial court was well within its discretion in finding that Golden State's suit did not confer a “significant benefit” on the public. Although this action resulted in the

recalculation of the Project’s energy impacts, it did not change the City’s ultimate conclusions that those impacts were less than significant (Cal. Code Regs., tit. 14, § 15126, subd. (a)), that the Project would not cause a wasteful, inefficient, or unnecessary use of energy (*id.*, § 15126.2, subd. (b)), or that the Project’s energy requirements would not require additional infrastructure capacity (*id.*, Appendix F, subd. II.(C)(1)). Nor did the correction have any practical effect on the Project: It did not result in an injunction preventing the Project’s construction, withdrawal of Project approvals, or any changes to the Project’s design. Instead, as in *Concerned Citizens* and *Karuk*, the Project’s physical structure and energy demands at the conclusion of this suit remain exactly the same as they were before this suit was brought. Thus, as in *Concerned Citizens* and *Karuk*, Golden State did not effect a “ ‘change in the defendant’s conduct’ ” and, thus, obtained no “genuine relief.” (See *Karuk, supra*, 183 Cal.App.4th at pp. 365–366.)

Golden State contends that the City’s conclusion that energy impacts would be less-than-significant remained the same only because the City “changed the standard” by which energy impacts were measured, from a standard “focused on whether the Project would cause a ‘net reduction’ in energy use [citation], to one focused on whether there was a “wasteful, inefficient, and unnecessary consumption of energy.” Not so. As we have described, both the EIR and the REA evaluated the Project’s energy impacts according to the CEQA Guidelines, including by considering whether the Project would cause “wasteful, inefficient, or unnecessary use of energy.” (Cal. Code Regs., tit. 14, § 15126.2, subd. (b).) Although the initial EIR also noted that the Project would reduce energy consumption, it did not

conclude that the Project complied with CEQA for this reason. Indeed, such a conclusion would have made no sense because reduction of energy use is not a CEQA requirement.

Golden State also contends that the City used the wrong standard to support its “no impact” determination because “asking *only* whether energy consumption is ‘wasteful, inefficient, and unnecessary’ is the wrong standard under [*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209–213 (*Clean Energy*) and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264–265 (*Ukiah Citizens*)], both of which recognize that . . . the CEQA Guidelines require[] more than this.” Undoubtedly, Golden State is correct that the wasteful/inefficient/unnecessary standard is not the only one by which a Project’s energy impacts should be measured. But as we have discussed, the City evaluated the Project’s energy impacts in a variety of ways, including whether the Project complied with green energy standards, whether its energy demands were within existing capacities, and whether the Project’s energy impacts were “significant.” Golden State does not identify any particular metric by which the City was required to, but did not, evaluate the Project’s expected energy impacts, and thus we cannot conclude the City applied the wrong energy standards.

Finally, Golden State urges that the trial court erroneously required it to establish that it conferred a significant benefit “on the general public,” rather than on a “large class of persons,” as the statute requires. We do not agree. The trial court correctly noted that an award of fees is appropriate under section 1021.5 if, among other things, the petitioner conferred a benefit on “the general public *or a large class of persons.*” (Italics added and

omitted.) Although the trial court thereafter said that Golden State failed to demonstrate its action conferred “a ‘significant benefit’ on the general public,” nothing in its analysis suggested that it denied attorney fees because this suit did not provide a benefit to the entire public. Rather the court’s order made clear that it denied fees because the energy impact error was merely a “minor calculation error,” the correction of which did not confer significant benefits on anyone.

For all of these reasons, the trial court was well within its discretion in concluding that Golden State’s suit did not result in a significant public benefit. It therefore did not err in denying Golden State’s motion for attorney fees.⁷

⁷ Because we have so concluded, we need not address the other prongs of section 1021.5, including whether this action resulted in the enforcement of an important right affecting the public interest and whether Golden State was a “successful party.”

DISPOSITION

The order denying attorney fees is affirmed. Respondents are awarded their appellate costs.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.